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Press Release SEA/39
8 May 1975

THIRD COMMITTEE OF SEA LAW CONFERENCE CONCLUDES WORK FOR SESSION

The Third Committee (environment, research and technology) of the Third United Nations Conference on the Law of the Sea concluded its work for the current session today, 8 May, after taking note of a statement on its work and hearing concluding remarks by its Chairman, Alexander Yankov (Bulgaria).

The Chairman remarked that the Committee had made significant progress at Geneva in negotiating and drafting articles for a law of the sea convention and that this would have a considerable bearing on the future work of the Conference. The procedural arrangements made by the Committee for the conduct of its business had proved to be efficient and helpful. He praised the devotion and efforts of the two Chairmen of the Committee's informal meetings, José Luis Vallarta (Mexico) and Cornel Metternich (Federal Republic of Germany).

During the session, Mr. Yankov noted, the Committee had received a number of new proposals, some of which filled important gaps. A spirit of understanding had prevailed in the Committee throughout the session, and constructive negotiations had led to agreement on several texts. (For a summary of the informally agreed texts, see Press Release SEA/37 of 7 May.)

The Chairman informed the Committee that, as requested by the Conference on 18 April, he had submitted to the President a single negotiating text in which he had tried to take full account of all formal and informal proposals made in the Committee. In a letter accompanying the text, he had conveyed to the President his concern about the content and the format of the documents and had pointed out the problems and difficulties relating to the presentation of such texts. The Chairman expressed the opinion that a single negotiating text should serve only as a procedural device and a basis for negotiations, and should in no case be presented as a compromise. He hoped that the document would not stimulate the proliferation of alternatives.

Mr. Yankov expressed the view that all the documents submitted at the session, and the exchange of ideas at Geneva, should generate progress in the negotiations which would take place before and during the next session of the Conference. At the next session the Committee should strive to complete the drafting of articles on all three agenda items allocated to it - protection of the marine environment, marine scientific research and development and transfer of technology. Mr. Yankov appealed through delegates to their Governments to refrain from any unilateral action which might create additional difficulties for the Conference.

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In conclusion, the Chairman expressed the hope that the next session of the Committee would preserve and develop the spirit of compromise which had characterized the current session.

The four-page statement on the work of the Third Committee (document A/CONF.62/C.3/L.32 and Corr.1), which the Committee took note of today, was introduced by the Rapporteur, Charles Manyang d'Awol (Sudan). It contains a factual description of activities and work accomplished by the Committee during this session.

The statement is divided into six parts. Part I is the introduction, including a list of officers of the Committee during the Geneva session. Part II refers to the mandate of the Committee as allocated to it by the Conference last June. Part III describes the organization of work in both formal and informal meetings of the Committee. Part IV cites documents dealing with the work of the informal meetings. The fifth part is a paragraph on documentation, and the last part contains a request by the Committee for a future opportunity to complete its mandate. Annexed to the statement is a list of all the documents presented to the Committee at Geneva.

On another matter, J. A. Wallate (Netherlands) announced today that his Government had decided, at the request of the Secretary-General, to host a United Nations Seminar on the Transfer of Appropriate Marine Technology to Developing Countries, which was planned for the latter part of 1976. The Netherlands would make a substantial financial contribution to meet the expenses of the seminar, he added.

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Round-up of session

Press Release SEA/41
9 May 1975

THIRD SESSION OF THIRD UNITED NATIONS CONFERENCE ON LAW OF SEA, GENEVA, 17 MARCH-9 MAY

Continues work towards new law of sea convention

Further work towards a comprehensive new convention on the law of the sea was carried out at an eight-week session in Geneva of the Third United Nations Conference on the Law of the Sea, which ended at the Palais des Nations this morning, 9 May.

During the session, which opened on 17 March, delegates from some 141 nations consulted and negotiated, largely in informal meetings, on the many complex issues before them. The Conference agreed to hold another session - its fourth - for eight weeks in New York beginning 29 March 1976.

To assist future negotiations, the Conference asked the Chairman of its three main committees to prepare a "single negotiating text" covering all subjects assigned to the committees. This 115-page document (A/CONF.62/WP.8, in three parts), containing 304 draft articles, was circulated on the last day of the session, with the idea that governments should study it before the next session and use it as the basis for negotiations.

The Conference followed at Geneva the organizational arrangements devised at its first session in New York in December 1973 and put into effect at its first substantive session at Caracas in June-August 1974. Its three main committees took up where they had left off at Caracas, with the following results:

- The First Committee, concerned with an international regime and machinery for the sea-bed area beyond national jurisdiction, concentrated on the key issue of basic conditions to govern exploration and exploitation of the mineral resources of the area. Just before the session ended, a Working Group of the Committee was seeking agreement on a model scheme through which the proposed world authority for the sea-bed could enter into joint ventures with outside entities - such as governments and private firms - interested in mining the ocean depths. Meanwhile, the Committee itself held its first detailed debate on the structure, functions and powers of the proposed authority.

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Unlike the Caracas session, which heard policy statements from most of the delegations attending the Conference and conducted open debates in Committee, the Geneva session concentrated on informal discussions aimed at ironing out differences. There were only five plenary meetings and 16 formal meetings of the main committees during the eight weeks.

In recommending a further eight-week session at New York beginning next March, the Conference also decided to leave it to that session to decide whether to hold a second working session in 1976. However, it recommended that the General Assembly, which convened the Conference, authorize the Secretary-General to make facilities available for a second session next year if the Conference considered such a meeting necessary. The Conference had already decided last August that a final session for the purpose of signing a law of the sea convention should be held at Caracas, where its substantive work began.

The task of the Conference, as set out in General Assembly resolution 2750 C (XXV) of 1970, is to adopt a convention dealing with all matters relating to the law of the sea. Preparations for the Conference were made between 1968 and 1973 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. (For further background on the Conference see Press Release SEA/6 of 13 March.)

The Assembly invited to the Conference the 138 members of the United Nations and the other States (now numbering 12) which are members of one or more specialized agencies. Some 141 States sent representatives to Geneva. Also invited to attend as observers were several territories not yet independent, as well as representatives of national liberation movements recognized by the Organization of African Unity and the League of Arab States in their respective regions.

The Conference approved no over-all report on its work. Brief statements of the activities of each main committee were prepared by their Rapporteurs (documents A/CONF.62/C.1/L.15, C.2/L.89, and C.3/L.32 and Corr.1).

On the question of contacts among delegations before the next session, the Conference recommended at its closing meeting that the Secretary-General should give all possible assistance to groups which wanted to meet for this purpose.

Single negotiating text

The decision to ask the Committee Chairmen to prepare a single negotiating text was taken by the Conference on 18 April, on the proposal of its President. Explaining his proposal to the Conference, the President said that the text should take account of the work of formal and informal groups at the Conference, that it should be informal in nature and should not prejudice the position of any delegation. It would not be a compromise document or serve as the basis for voting; nor would it be a negotiated text or a substitute for one. In the negotiations that would follow presentation of the texts, he added, any State could propose amendments.

The idea of preparing a single text was advanced after many delegations had pointed to the difficulties the Conference was encountering because it did not have one document to work from in its task of drafting treaty articles. Preparatory work in the Sea-Bed Committee, and further refinements at Caracas, had produced a number of texts for different articles, most of them with several alternatives, which the Conference has been striving to narrow down to generally acceptable formulas.

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The part of the single text presented by the Chairman of the First Committee, Paul Bamela Engo (Cameroon), is entitled "Convention on the sea-bed and the ocean floor and the subsoil thereof beyond the limits of national jurisdiction." Its 75 articles are divided into four parts: on interpretation, principles, an international sea-bed authority and final provisions.

Following a single article on interpretation, the second part, on principles, contains 18 articles concerning: the area dealt with in the convention and its limits; the notion that the area is the common heritage of mankind; the principle that there shall be no claim or exercise of sovereignty or other rights; general conduct in the area and in relation to the area; activities in the area; the notion that such activities should benefit mankind as a whole; reservation and use of the area exclusively for peaceful purposes; general principles regarding activities in the area; scientific research; transfer of technology; protection of the marine environment; protection of human life; rights of coastal States; legal status of the superjacent waters and airspace; accommodation of activities in the area and in the marine environment; responsibility to ensure compliance and liability for damage; participation of developing countries including land-locked and other geographically disadvantaged States, and archaeological and historical objects.

The next part, on the international sea-bed authority, contains 44 articles. They cover: establishment of the authority; the nature and fundamental principles of its functioning; functions; organs; the assembly and its powers and functions; the council and its powers and organs; an economic planning commission; technical commission; tribunal; "enterprise" (executing body); secretariat; finance; status and privileges, and settlement of disputes.

The 12 articles in the final provisions deal with: amendment of the convention; general review of its provisions; suspension of privileges under the convention; signature; ratification; accession; entry into force; provisional application; the depository, and authentic texts.

There is also a 21-paragraph annex on basic conditions of general survey, exploration and exploitation.

The part of the single text presented by the Chairman of the Second Committee, Reynaldo Galindo Pohl (El Salvador), is concerned with general aspects of the law of the sea. Its 137 articles are in 11 parts, concerning: the territorial sea and the contiguous zone; straits used for international navigation; the exclusive economic zone; the continental shelf; the high seas; land-locked States; archipelagos; regime of islands; enclosed and semi-enclosed seas; territories under foreign occupation or colonial domination, and settlement of disputes.

Part I, on the territorial sea and the contiguous zone, has 33 articles divided into four sections: general; limits of the territorial sea; innocent passage in the territorial sea, and contiguous zone. On innocent pass ge there are subsections on rules applicable to all ships, to merchant ships and to government ships.

Part II, on straits used for international navigation, has 11 articles in three sections: general; transit passage, and innocent passage. Part III, on the exclusive economic zone, has 17 articles, while part IV, on the continental shelf, has 11.

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Part V, on the high seas, [illegible] general, and management and conservation of living resources. Part VI, on land-locked States, has nine articles.

There are 15 articles in part VII, on archipelagos; they are divided into two sections, covering archipelagic States and oceanic archipelagos belonging to continental States. Part VIII, on the regime of islands, has one article; part IX, on enclosed and semi-enclosed seas, has three. The remaining parts, on territories under foreign occupation or colonial domination and settlement of disputes, have one article each. An annex lists highly migratory species of fish and marine mammals.

The part of the text submitted by the Chairman of the Third Committee, Alexander Yankov (Bulgaria), deals with the environment, research and technology. Its 92 articles are divided into three parts, one for each of these subjects.

The first part, on protection and preservation of the marine environment, contains 44 articles dealing with: general provisions; global and regional co-operation; technical assistance; monitoring; environmental assessment; standards; enforcement; responsibility and liability; sovereign immunity; relationship to other conventions on preservation of the marine environment, and settlement of disputes.

The next part, on marine scientific research, has 37 articles dealing with: general provisions; international and regional co-operation; conduct and promotion of research; status of scientific equipment in the marine environment; responsibility and liability, and settlement of disputes.

The final part, on development and transfer of technology, contains 11 articles covering: general provisions; international co-operation, and regional marine scientific and technological centres.

Sea-bed regime and machinery

In the First Committee, most of the eight weeks at Geneva were devoted to informal discussions and negotiations on an issue identified at Caracas as crucial to the creation of a legal order for the deep sea-bed: what conditions should govern exploration and exploitation of resources in the sea-bed area beyond national jurisdiction. The work was carried on in informal meetings of a Working Group set up last August in Caracas, composed of 50 members but open to all delegations at the Conference. The Group had been asked last year to pursue negotiations on 21 draft articles governing a sea-bed regime (document A/CONF.62/C.1/L.3/Rev.1) with emphasis on the issue of what entities (governments, organizations, private firms) would be entitled to explore and exploit the area.

At Caracas four proposals had been submitted on these basic conditions - by the United States, eight countries in the European Economic Community, Japan and the "Group of 77" developing countries. At Geneva a fifth paper was submitted, by the Soviet Union (document A/CONF.62/C.1/L.12). The proposals differed in the nature of the control to be exercised by the proposed sea-bed authority over outside entities permitted to exploit the area.

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Christopher W. Pinto (Sri Lanka), Chairman of the Working Group, who made three ral progress reports to the Committee during the session, stated in the first of these, n 26 March, that the Group, after concentrating at Caracas on "who may exploit the rea," had decided to turn to the closely related question of conditions for exploration nd exploitation. It had chosen three groups of issues for immediate discussion, plating to the scope of the authority's power, the methods of entering into rrangements with outside entities and basic principles of those arrangements, and the ttlement of disputes. The Group was trying to evolve an "operational model of a ntractual relationship" between the authority and companies or State enterprises ssessing the technology needed to exploit the area.

In his next report, on 25 April, Mr. Pinto provided further details of the oup's efforts to set up a model for a "contractual joint venture exploitation stem." It was trying, he said, to clarify the concept of joint ventures between the thority and an exploiting entity, "as a possible legal framework within which the thority could offer terms, sufficiently attractive to those currently possessing e technology, for entering into partnership with it for exploitation." The Group ped that work on such an exploitation system might reveal common ground - without ejudice to other methods, such as direct exploitation by the authority, regarded as portant by some States.

He gave the following outline of a proposal submitted anonymously on this bject, taking account of the major concerns of delegations and proposed as a basis for scussion:

"The paper .... seeks to cover the basic conditions of a contractual joint venture tween, on the one hand, the authority as exercising the community's rights in the sources of the common heritage and sole manager of those resources, and on the other, member State of the authority or a State enterprise or a person natural or juridical ich possesses the nationality of a contracting State or is effectively controlled by s nationals, or any group of those entities. Beginning with an affirmation of the thority's rights in the resources and the minerals derived from them, the basic nditions provide for access to those resources, the procedures and criteria for plications for contracts, pre-qualification of applicants and the selection of plicants, taking into account among other things the principle of maximizing the nefits to the authority; the basic rights and obligations of the authority and its ntracting partner under the joint venture, including clear assurances to the latter garding security of tenure and a fair return on his investment. The basic conditions so specify the range of subjects regarding which procedures, rules and regulations ll have to be prescribed by the authority and, with regard to certain operational bjects, go further to set out objective criteria that the authority must apply in rmulating specific procedures, rules and regulations. Other provisions deal with e law applicable to the joint venture contract, which is stipulated to be the law the contract only, to the exclusion of all national legal systems; liability for nage, and the settlement of disputes."

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The Working Group Chairman said there were differences of opinion on two fundamental matters, on which negotiations were continuing. They reflected the concerns of two important groups of States with different economic systems.

"The first matter," he went on, "related to the concern of one group of States /socialist countries/ that while the authority might have a broad discretion as to how to exploit one portion of the area, a specified proportionate area must be subject to a separate regime in which States members of the authority, on the basis of strict equality of treatment, might have a certain autonomy, subject to over-all supervision by the authority. This system is viewed by some as the only guarantee that the entire sea-bed will notbecome a prey to selfish exploitation by giant corporations, to the detriment of developing countries which currently lack the technology to compete in this field."

"The other matter, reflecting the concerns of another group of States /some Western industrialized countries/, arises through a proposed device whereby an applicant for a contract for exploitation activities would be required to submit to the authority two alternative areas of equivalent commercial interest for the conduct of operations under the contract. The authority would then have the right to select one such area - an item of considerable value to the authority - for itself, for exploitation virtually in its complete discretion. The authority's right to retain this block in what has been described as the authority's 'bank' would be conditional on the award of the contract to the applicant - subject, however, to all the basic conditions prescribed by the authority, including direct and effective control over the contractor. This is viewed by some as a useful and even necessary device that would tend to ensure access to the resources of the area by qualified applicants, and only by qualified applicants, while helping to accumulate within the authority commercial data which it would otherwise find it difficult or at least very expensive to acquire. The two-area system is viewed as part of an over-all agreement that would also cover such matters as certainty with regard to opening of areas for continued exploitation and non-discriminatory treatment of applicants."

Mr. Pinto remarked that in the view of some delegations, both proposals might represent "an unwarranted fetter on the discretion of the authority." He added: "Some might be tempted to say that while the first device reserves half the area for individual States - only a handful of which can utilize their right directly - the other device reserves half the area for giant national corporations which exist only in a handful of States, and further, that the authority, as representing the community in general and the developing countries in particular, comes off poorly under either system."

In his last report on 7 May, the Chairman of the Working Group said he was about to submit a revised paper for discussion at the next session, to serve as a point of departure for future negotiation. He suggested that the Group complete work on the basic conditions before returning to the 21 draft articles on a sea-bed regime. He expressed "confidence that the next session will see the successful completion of this task."

In addition to these discussions in its Working Group, the Committee devoted three of its six formal meetings to an exchange of views on the other main aspect of its mandate, the structure, functions and powers of the proposed authority. Twenty-nine speakers took part in this debate, held on 25 and 28 April.

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Most of those who spoke were in broad agreement that the authority should have an assembly composed of all participating States, a council of limited membership which would serve as an executive body, and an organ or organs (called by some the "enterprise") which would be responsible for the actual conduct and management of sea-bed activities. Most speakers favoured the creation of some mechanism for the settlement of disputes. Delegates from the developing countries also called for the establishment of a body concerned with the regulation of sea-bed mineral production. Differing views were expressed as to the relative powers and functions of the assembly and the council.

Also in connexion with the authority, Czechoslovakia submitted two proposals on behalf of the land-locked and other geographically disadvantaged States. The first (document A/CONF.62/C.1/L.13 and Corr.1) contains a proposed formula for distributing among States the revenue earned by the authority from sea-bed exploitation, while the second (document A/CONF.62/C.1/L.14) suggests that geographically disadvantaged States should make up at least two-fifths of the membership of the council and other bodies of the authority with limited membership.

In concluding remarks to the Committee on 7 May, its Chairman, Mr. Engo, noted that the Committee had avoided lengthy statements and reiteration of national positions and had instead encouraged private meetings. The Committee's work had been valuable, "but the truth is that success has eluded us so far."

General aspects of sea law

The Second Committee devoted most of its time to negotiations and informal consultations aimed at reducing as far as possible the number of alternative proposals that had been presented at Caracas for a new convention on the law of the sea. It held only two formal meetings, on 18 March to organize its work and on 2 May to receive a fresh proposal from Ecuador on the territorial sea (document A/CONF. 62/C.2/L.89).

At an informal meeting on 4 April, the Committee decided to establish a number of informal consultative groups, in which all members of the Committee could participate. These groups dealt with the following subjects: (1) coastal baselines from which ocean areas could be measured;(2) historic bays and historic waters in which States have traditionally recognized rights;(3) the contiguous zone adjacent to the territorial sea; (4) innocent passage of ships through coastal waters;(5)high seas;(6)the transit rights of land-locked and geographically disadvantaged States;(7)continental shelf;(8)exclusive economic zone where States would have yet-to-be defined jurisdiction over resources and possibly other matters;(9)straits;(10)enclosed and semi-enclosed seas;(11) islands; and (12) delimitation of ocean boundaries.

The basis for the Committee's negotiations and informal meetings was the working paper prepared at the last session of the Conference in Caracas. That paper reflected in generally acceptable formulations the main trends that had emerged from proposals submitted by delegations either to the Conference itself or to the Sea-Bed Committee. The Second Committee completed a second reading of the paper at Geneva, intended to reduce the number of alternatives.

The working paper (document A/CONF.62/C.2/WP.1)was prepared with the aim of focusing the discussion on the fundamental issues of each of the items allocated to the Committee. It contained draft provisions for a new convention, most with two or more alternative formulas,organized according to the items and subitems dealt with by the Committee. It did not indicate which States support each formula or the degree of support each had received.

The Second Committee has been assigned 15 of the 24 items before the Conference, covering the legal regimes that are to be created for the various ocean spaces from the territorial sea out to the high seas, as well as the special interests and needs of particular groups of countries, such as land-locked States and archipelagos.

The Committee decided on 18 March that the consultations to be undertaken at the session would be focused on substantive issues and be carried out under the auspices of the officers of the Committee.

The work of the informal groups was summed up in a series of statements made to an informal meeting of the Committee on 2 May by the officers of the Committee who presided over the groups. The Committee Chairman, Mr. Galindo Pohl, said the object of the groups was to reconcile the positions held and if possible reduce them to a single text. Consultations had been carried out daily in the afternoons while the mornings had been devoted to a second reading of the Caracas working paper on main trends. In addition, suggestions and working papers had been passed on to the informal groups from parallel private negotiations.

The Chairman reported that the topics on which consultations had been held were far from exhausted. While it had proved possible to produce single texts on technical subjects, that had not been the case with subjects that had more political content.

The presiding officers of the informal groups reported the following developments:

With regard to the economic zone, the main lines of that concept emerged although they could not be formalized in document form.

The attention of the informal group on the continental shelf was focused to a large extent on the question of definition and the nature of the coastal State's rights on the shelf. A small group was formed which reached a consensus on the definition and a near consensus on provisions relating to the laying of submarine cables and pipelines.

The informal group on islands succeeded in reducing the number of alternatives in the main trends paper, while the one on baselines succeeded in preparing a revised consolidated text on this subject which received a complete reading in the group.

The informal group on the contiguous zone held one meeting in which there appeared to be agreement on the question of jurisdiction over such a zone. There was also agreement that such a zone should apply at least for those States not wishing to claim the maximum breadth of the territorial sea.

The group on enclosed and semi-enclosed seas centred its discussion on the definition of the two types of seas. The group was divided generally into those favouring a special regime for such seas and those favouring a global approach.

The informal group on innocent passage reached agreement on the definition of passage, the nature of activities that could be characterized as non-innocent, the type of laws and regulations the coastal State could make in regard to them, and the exercise of civil and criminal jurisdiction in the territorial sea.

The group on straits held two meetings but there was little movement towards merging the basic issues: definition of the straits involved and the nature of the legal regime to be applied to them.

The group on the high seas confined its discussion to rights and duties, slavery, piracy, drugs, hot pursuit and transmission from the high seas. It put off to a later session such questions as the definition of high seas, freedom of the high seas and action with regard to their living resources.

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vironment, research and technology

The Third Committee continued the work it had started at Caracas on two of the ree subjects before it -- protection of the marine environment and marine scientific search. It also received proposals on the third topic, the development and transfer technology. At eight formal meetings it received and discussed eight new or revised ts of draft articles, while at informal meetings it worked on texts article by article.

The Committee reached agreement in informal session on most of the contents of ur draft articles concerned with protection of the ocean environment (document CONF.62/C.3/L.15/Add.1). They relate to monitoring of the risks and effects of pollution, sessment of the environmental impact of activities planned by States, standards for nd-based sources of marine pollution, and dumping of wastes at sea.

The informally agreed article on monitoring provides that States, consistent with e rights of other States, shall endeavour to observe, measure, evaluate and analyse e risks or effects of pollution on the marine environment. In particular, they hall keep under surveillance the effect of any activities which they permit or in which ey engage to determine whether these activities are likely to pollute the marine vironment." This monitoring is to be carried on individually or collectively, and s results reported to the United Nations Environment Programme (UNEP) or other ganizations.

The Committee deferred for later consideration the question of whether to qualify e duty of States to monitor by introducing the phrase "as much as is practicable." regard to surveillance, one delegation proposed that States be given the duty to ep under surveillance "the areas in which they exercise jurisdiction." As to the ference to UNEP, some delegations considered that individual organizations should not named.

On environmental assessment, the Committee agreed in informal session on a draft ticle stating that when States have "reasonable grounds for expecting that planned tivities under their jurisdiction may cause substantial pollution of the marine vironment, they shall, as far as practicable, assess the potential effects of such tivities on the marine environment" and report the results in the same way they are communicate information under the general provision on monitoring. The text adds at States shall assist others, particularly developing countries, in the preparation such environmental assessments.

Regarding standards for land-based sources of marine pollution, an informally reed article would oblige States to establish national laws and regulations, and take her measures, "to prevent, reduce and control pollution of the marine environment om land-based sources." States are to establish such laws and regulations "taking to account internationally agreed rules, standards and recommended practices and ocedures." A further provision would oblige States "to endeavour to harmonize their tional policies at the appropriate regional level." Special mention is made of the ed to establish standards "designed to minimize to the fullest possible extent the lease of toxic and harmful substances, especially persistent substances, into the arine environment."

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There was agreement that the text should require that States endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent reduce and control marine pollution from land sources. However, there was disagreement as to whether to add the phrase "taking into account characteristic regional features, the economic capacity of developing countries and their need for economic development."

The last of the informally agreed texts, on pollution from dumping of wastes at sea, says that States shall establish national laws and regulations and take other measures to prevent, reduce and control marine pollution from dumping of wastes and other matter. Such steps would ensure that dumping was not carried out without the permission of competent State authorities. Another paragraph would oblige States to endeavour to establish, as soon as possible, global and regional rules, standards, and recommended practices and procedures to the same end. In regard to an area of the seas to be determined at a later stage, dumping could not be carried out without the express approval of the coastal State, which would have the exclusive right to permit, regulate and control such dumping.

The Committee did not examine a proposed paragraph whcih would forbid any dumping in the international ocean area without the authorization of the State in whose territory the material is loaded for dumping. Also, it left for future consideration the question of whether to define "dumping" in the convention.

Informal agreement at Geneva on these four draft articles follows similar action at Caracas with regard to all or part of seven other articles on environmental protection. The subjects on which agreement was reached last year were the basic obligation of States to protect and preserve the marine environment, the right of States to exploit their own natural resources (an article opposed by some delegations), particular environmental obligations of States (partial text), the obligation not to transfer pollution from one area to another, global and regional co-operation (partial text), technical assistance, and the relevance of economic factors in considering whether States have discharged their obligations (three alternative proposals).

On other environmental matters, the Committee did not agree on proposals concerning standards for marine pollution from sea-bed exploration and exploitation, and the extent to which national laws, regulations and measures should take international ones into account. A number of proposals were informally submitted on these matters (document A/CONF.62/C.3/L.30). In addition, nine countries of Eastern and Western Europe formally submitted a new draft on prevention, reduction and control of marine pollution (document A/CONF.62/C.3/L.24), while the Soviet Union presented additional drafts on prevention of pollution (document A/CONF.62/C.3/L.25 and Corr.1). Greece proposed an article on prevention of pollution from dumping (document A/CONF.62/C.3/L.27).

Formal and informal proposals were also submitted on marine scientific research. The formal ones included revised sets of draft articles originally proposed at Caracas by the "Group of 77" developing countries (document A/CONF.62/C.3/L.13/Rev.2), as well as new proposals by nine socialist States (document A/CONF.62/C.3/L.26) and by Colombia, El Salvador, Mexico and Nigeria (document A/CONF.62/C.3/L.29); also, amendments backed by the land-locked and geographically disadvantaged States (document A/CONF.62/C.3/L.27) to

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posals made last year by a similar group of States. Informal texts (document ONF.62/C.3/L.31) were submitted on the legal status of installations for marine entific research (three proposals and a possible consolidated text), responsibility liability (five proposals and a possible consolidated text), and the conduct of earch (one proposal).

In the discussion of the formal proposals at open meetings, much of the debate tred on the relative rights and duties of coastal and researching States, ticularly in the economic zone. Some delegations sought recognition of the nciple that research in that area may not be conducted without the consent of the stal State, while others favoured freedom of research in the area.

Concerning the transfer of technology, the Group of 77 submitted a new version a proposal it had made last year (document A/CONF.62/C.3/L.12/Rev.1), and a posed consolidated text was circulated informally (document A/CONF.62/C.3/L.31).

At the last meeting of the Committee on 3 May, the Chairman, Mr. Yankov, arked that it had made significant progress at Geneva in negotiating and drafting icles. It had received a number of new proposals which had filled important gaps, a spirit of understanding had prevailed throughout the session.

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Press Release SEA/43
9 May 1975

SECRETARY-GENERAL'S PERSONAL REPRESENTATIVE SEES PROGRESS AT LAW OF THE SEA CONFERENCE

Bernardo Zuleta, the Secretary-General's Special Representative to the Third United Nations Conference on the Law of the Sea, said today, 9 May, that a "fantastic amount of progress" had occurred in the acceptance by the international community of certain concepts which, two years ago, seemed "wild products of the imagination."

At a press briefing following the conclusion of the Geneva session of the Conference, Mr. Zuleta stressed that the process now under way was not codification but law making. It was necessarily a slow process, because law had to come as a result of the international community's acceptance of new economic and political developments.

In 1973, when preparations for the Conference began, the idea of an economic zone was not acceptable, Mr. Zuleta said. Today, it was safe to claim that it had become an acceptable trend of international law.

The Secretary-General's Special Representative also spoke of progress on the idea of joint ventures between an international authority and States, for the exploitation of the seabed. Two years ago, that would have been "an insulting proposition," he remarked.

"We have to be both patient and conscious of a sense of urgency," Mr. Zuleta went on. Obviously, nations could not wait forever. But the acceptance of new principles by the international community could not be "a haphazard job." A number of countries could have tried to impose a solution at this stage through majority votes, but the Conference had "a clear sense of responsibility." Delegations knew that a new law of the sea could not be a "paper victory."

The mere fact that the Conference had agreed at Geneva to the possibility of holding two sessions next year showed a sense of urgency, Mr. Zuleta declared. He recalled that it had taken the United States 25 years to prepare a unified commercial code, which was not nearly so crucial a document as a new law of the sea convention. So why be surprised if progress was slow? he asked.

In answer to questions, the Secretary-General's Special Representative said that the single text for negotiation prepared by the Chairmen of the three main committees did not necessarily reflect a majority opinion, consensus or a compromise, but "what the Chairmen consider a basis for negotiation."

He stressed that "recent events," particularly over the past two years, had oved that it was much better to work towards the solution of problems within e United Nations framework than outside. The United Nations, with all its fficulties, was an international forum of sovereign States.

In his closing remarks, Mr. Zuleta observed that the Law of the Sea Conference s "a revolutionary conference" because "it is creating new law for the first me."

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Press Release SEA/40
9 May 1975

LAW OF SEA CONFERENCE ENDS GENEVA SESSION AFTER APPEAL BY ITS PRESIDENT TO AVOID UNILATERAL ACTION THAT MIGHT JEOPARDIZE SEA LAW CONVENTION

The Third United Nations Conference on the Law of the Sea concluded this morning, 9 May, its eight-week session at Geneva, following an appeal by its President, voiced at the final plenary meeting, that States refrain from any action that might jeopardize the conclusion of a law of the sea convention.

"I should like to make a fervent appeal to all States to refrain from taking any action, and also to use their powers to restrain their nationals from taking any action or adopting any measures, which would place in jeopardy the conclusion of a universally acceptable treaty of a just and equitable nature," said the President, H. Shirley Amerasinghe (Sri Lanka).

Before adjourning, the Conference agreed without objection that its next session be held for eight weeks in New York beginning 29 March 1976, and that a decision regarding a second session in 1976 be left to the session next spring. The Conference decided to ask the General Assembly, which convened it, to provide facilities for a second session in 1976 "should such a session be necessary."

The President announced that the "single negotiating text" of articles for a convention would be distributed to delegates this morning. (It was made available following the adjournment of the session, as document A/CONF.62/WP.8, in three parts.) This is the document which the Conference, on 18 April, requested the Chairmen of its three main committees to prepare, covering all the subjects given to each Committee and taking account of the views of delegations. The Chairmen of two committees made brief comments this morning on their parts of the text.

In making his appeal to refrain from unilateral action, the President said he had been approached some days ago by representatives of the "Group of 77" developing countries, who had expressed concern over "certain pronouncements" that if the Conference did not conclude a treaty, unilateral action would be taken in regard to exploration and exploitation of the mineral resources of the deep sea-bed.

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In addition to his own appeal on this subject, the President read out an appeal addressed to him from the group of land-locked and geographically disadvantaged States at the Conference, that States not take "any unilateral or other measures which would extend the national jurisdiction beyond 12 nautical miles" before the Conference had completed its work. (The text of both appeals appears at the end of this release.)

The President also read out a resolution adopted on 24 April at Nairobi by the Governing Council of the United Nations Environment Programme (UNEP), urging the Conference to attach highest priority to including treaty provisions for the protection of the marine environment (see Press Release UNEP/63 of 30 April). Mr. Amerasinghe commented that the UNEP Council was unduly optimistic if it thought that agreement could have been reached at the Geneva session of the Conference on articles concerning the marine environment. "In that respect they are far removed from reality," he added.

On another matter, the President thanked the Credentials Committee for its report on the credentials of delegates to the Geneva session (document A/CONF.62/44 and Corr.1). It indicates that the Committee accepted the credentials of 138 delegations, some of them subject to later validation. It adds: "The Committee further decided that the communications regarding participation in the Conference received from the Permanent Representative of the former 'Khmer Republic' and from the Permanent Observer of the Government of the former 'Republic of Viet-Nam' were invalid."

The President noted that credentials had since been received from three other States. This brought the total number of participating delegations at Geneva to 141.

In regard to arrangements for future sessions, the Conference, agreeing to a suggestion by the President, recommended to the General Assembly that, having regard to the importance of the Conference, the highest priority should be given to the provision of facilities for it.

The Conference also requested the Secretary-General to provide facilities for consultations among delegations prior to the next session of the Conference. The President remarked that a widely felt desire had been voiced in the General Committee that such consultations and negotiations should not be confined to groups but should include inter-group contacts.

Before calling on Committee Chairmen to comment on their portions of the negotiating text, the President said it was understood that the text would not be the subject of discussion but only a basis for negotiation.

Paul Bamela Engo (United Republic of Cameroon), Chairman of the First Committee (sea-bed regime and machinery), said a statement by him explaining certain matters concerning the text would be circulated to delegates today.

Alexander Yankov (Bulgaria), Chairman of the Third Committee (environment, research and technology), said the negotiating text was "neither an end nor an achievement" but was an indication that a turning-point had been reached in the negotiating process. He had tried to take account of all proposals and to reflect the views of delegates, but he had had to contend with conflicting views and therefore to make a choice, for which he alone was responsible. The text would not affect the status of existing proposals and was not intended as a compromise.

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At the end of the meeting Fernando Zegers (Chile) suggested that the Secretariat circulate to governments any comments received from other governments on the text. However, John R. Stevenson (United States) expressed concern that this might lead to a proliferation of amendments, making negotiations more difficult. The President suggested that delegations wishing to have their views known should circulate them directly to other participatns.

As had been envisaged, there were no reports from committees on their activities at the session. (A round-up of the session will be issued as Press Release SEA/41.)

President's appeal against unilateral action

Following is the prepared text of President Amerasinghe's statement regarding unilateral action:

"A deputation from the Group of 77 led by the Chairman of the Group, Ambassador /Moncef/ Khedadi of Tunisia, who was accompanied by the chairmen of the three constituent groups, viz: the African, Asian and Latin American Groups, met me some days ago and conveyed to me the grave concern felt by the members of the Group of 77 over certain pronouncements that had been made in what they considered to be responsible quarters to the effect that, if a treaty was not concluded by the Conference, unilateral action would be taken in regard to the exploration and exploitation of the mineral resources of the deep sea bed. The time limit set for the conclusion of the proposed new law of the sea treaty or convention before resort to such unilateral action as appeared to be in contemplation was not specified but the pronouncements were considered so categorical as to prove disturbing to the members of the Group of 77, none of whom have the financial or technological capacity to explore and exploit the mineral resources of the deep sea bed.

"All participants in this Conference share one common desire and that is to arrive at a consensus over the provisions of the new law as the most certain guarantee of its viability and its durability. Many delegations have repeatedly stressed that the conclusion of a treaty or convention by consensus requires both time and patience. In my opinion it cannot be maintained seriously that the Conference has had all the time it needed and that, therefore, there is justification for unilateral action. In my concluding statement in Caracas I myself expressed the opinion that States could not be expected to exercise infinite patience. That was only my way of emphasising the imperative need for commencing the process of real negotiation without which a consensus cannot be achieved.

"I should like to make a fervent appeal to all States to refrain from taking any action, and also to use their powers to restrain their nationals from taking any action or adopting any measures, which would place in jeopardy the conclusion of a universally acceptable treaty of a just and equitable nature.

"I would draw attention to the Declaration of Principles Governing the Sea Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, adopted by the General Assembly as resolution 2749 (XXV) without dissent though with some abstentions, and what has come to be known as the General Assembly's moratorium resolution 2574 (XXIV) of 15 December 1969, which was adopted by a majority.

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Whatever reservations States may have expressed or may entertain in regard to the content of those two resolutions, it would serve as an earnest of good faith and a demonstration of goodwill if due regard were paid to the letter and the spirit of those two resolutions, at least until we conclude a treaty or tax the patience of the international community beyond the limits of endurance by delaying to reach agreement. Too much is at stake to be imperilled by unduly precipitate action.

"As this is only an appeal by the President of the Conference and is not meant to be a criticism of any State or person, I would hope it will be received in the spirit in which it has been made and that there will be no discussion of the subject.

"I am indebted to the Group of 77 for agreeing to this procedure rather than the more formal one of presenting a declaration or moving a resolution. It should be appreciated as a mark of their desire to avoid a long and perhaps heated debate."

Appeal by geographically disadvantaged States

Following is the text of a statement by the group of land-locked and geographically disadvantaged States, which the President read to the Conference at their request:

"Apart from an appeal not to take unilateral action in the international area, the group of land-locked and geographically disadvantaged States appeals to all States not to take any unilateral or other measures which would extend the national jurisdiction beyond 12 nautical miles before the Third United Nations Conference on the Law of the Sea has completed its work."

SECOND COMMITTEE

8 May 1975
ENGLISH ONLY

STATEMENTS OF THE CHAIRMAN,
VICE-CHAIRMEN AND RAPPORTEUR
AT THE 57TH INFORMAL MEETING
OF THE SECOND COMMITTEE ON 2 MAY 1975
ON ITS WORK OF THE INFORMAL
CONSULTATIVE GROUPS 1/

CHAIRMAN

The Second Committee decided to hold consultations on the various topics it had under consideration, with the object of reconciling the positions held and, if possible, reducing them to single texts. The consultation process was carried on daily in the afternoons, while the mornings were devoted to a second reading of the document on main trends (A/CONF.62/C.2/WP.1). Once that reconsideration was completed, consultations were held more or sometimes three times a day. The consultations were organized by the officers of the Committee, who also presided over them. The Journal of the Conference gave notice of the places and times of the consultations every day.

On the initiative of delegations, parallel private negotiations were also held. From these private consultations, suggestions and even working papers were passed to the official consultations. The channels of communication between the official and the informal consultations ensured that the topics were treated in various ways, with the common objective of increasing the points of coincidence and agreement.

In the [illegible] of their mandate of [illegible] the general aim of [illegible] objectives, [illegible] the territorial sea, the high seas, the archipelagic zone, the continental shelf, the exclusive economic zone, land-locked and geographically disadvantaged States, islands, enclosed and semi-enclosed seas and international straits 2/

I also took the liberty of convening the delegations most directly interested in archipelagic States, and obtained from them some draft texts on their positions. It was not possible, however, to bridge the gaps between the different positions held; moreover, it was considered that the situation was not ripe for a widening of the circle of consultations.

Three circumstances must be noted: first, that some topics were not discussed in the consultations; secondly, that even those topics on which consultations were held are far from being exhausted, because there was not time to consider all the relevant provisions in working paper A/CONF.62/C.2/WP.1; and, thirdly, that it proved possible to produce single texts on subjects of a technical nature, but not on those with more political content. Nevertheless, at least with regard to the economic zone, the main lines of the concept emerged, although they could not be formalized in a document.

1/ This document is informal and unofficial and is issued solely for the information of delegations. Due to other commitments, it was possible to publish it only in English and in limited quantities.

2/ Two meetings were later held on delimitation.

In summarizing these results, I should like to make the following points. When evaluating the consultation process, both the official and the informal consultations should be taken into account. The daily programme of the Conference recorded the very many activities of this kind carried out by the geographical groups, the Group of 77, the group of land-locked and other geographically disadvantaged States, the Central American Group, the group of oceanic States and ad hoc groups formed to study particular subjects. The efforts made to reduce the distance between the positions of delegations were both intensive and extensive.

It is necessary to distinguish between the use of an instrument and the results obtained by its use.

The plenary meeting of the Conference decided at its 55th meeting on 18 April 1975 3/ to change the method of work, by entrusting the Chairmen of the three committees with the task of preparing single negotiating texts. A new stage was opened by that decision and the views expressed in the consultations have provided really valid material for the preparation of such a document. This was pointed out by the President of the Conference when he stated, in connexion with the decision of the Conference on 10 April 1975 that the drafting of single texts would not preclude a request for tabling any existing text, that would it mean that no work could be done in working groups, or that other negotiations at the present session would cease. The President noted that, on the contrary, it should stimulate discussion, and facilitate progress in the negotiations.

I wish to thank [illegible] Chairman, Mr. [illegible], Mr. [illegible] and Mr. [illegible], and the Rapporteur, Mr. Mankan, for their very effective co-operation in guiding the consultations. I also convey my thanks to Mr. Roberto Herrera Cáceres, Ambassador of Honduras, who presided over the small working group on the continental shelf. I am likewise grateful to Mr. [illegible] and Mr. Camilo Ayala, Ambassadors of Colombia, for their co-operation in guiding the work of the small working group and in preparing texts on historic bays and historic waters.

In the eighth week of the Conference, the facilities for holding meetings will be reduced, as a result of the other conferences being held in the Palais des Nations. Nevertheless, consultations will be held on some matters of particular interest to delegations, such as questions relating to the delimitation of maritime spaces. The Committee will be able to hold other meetings, formal or informal, as circumstances require.

I shall call on the officers of the Committee to amplify this information as they see fit.

Before calling on the officers of the Committee, I shall first report on the informal consultative group on the continental shelf. This group held two meetings. The group's main attention was focused on the definition of the continental shelf and the nature of the coastal State's rights. Although the positions of delegations were divergent, the group was successful in identifying and merging similar approaches to the definition. There were also productive efforts in eliminating alternatives relating to submarine cables and pipelines.

3/ A/CONF.62/SR.55.

As a result of the discussions, a small group of interested States was formed to work on the definition and other issues. This smallgroup held two meetings under the chairmanship of the distinguished representative of Honduras. It reached a consensus on the definition of the continental shelf and a near consensus on the provisions relating to submarine cables and pipelines.

I shall now call on the officers of the Committee to provide information on the other informal consultation groups chaired by them.

MR. YOLGA

The informal consultative group whose discussions I was asked to chair arose out of a small preliminary group which was presided over by the Chairman of the Second Committee himself.

The group consisted not only of the land-locked States but also of the other geographically disadvantaged States. However, in accordance with the directives of the Chairman we concentrated our work on the question of transit.

The basic documents were document A/CONF.62/C.2/WP.1 and a draft single text submitted by one delegation. It was not possible to consider a further draft which was proposed by another delegation towards the end of our work.

At the meetings held on 16, 23 and 30 April and 1 May,4/ we were able to approve only provision 178, in which we amended the second paragraph, dealing with the definition of a "transit State", by replacing the last clause, " ... through whose territory the land-locked State shall have access to and from the sea", by the words " ... through whose territory 'traffic in transit' passes".

A long discussion took place on a proposal by one delegation that a fourth paragraph defining "means of transport" should be added to provision 178. The representatives of some transit countries, who questioned the advisability of such an addition, proved unwilling, in the end, to accept any definition other than a "neutral" one containing no list of means of transport, whereas the delegations of the land-locked States seemed ready to accept as a basis for discussion the definition from the New York Convention of 1965, which I had proposed as a compromise text. Consequently, the only point on which it was possible to reach agreement was that a definition of "means of transport" should be included in provision 178, but the definition itself has still to be found.

The outcome of the discussions concerning provision 179 was partial agreement concerning the principle of free access of land-locked States to and from the sea. On the other hand, the words "the existence and the nature of the right" at the beginning of that provision were the subject of acrimonious debate. One delegation requested that the concept of "the right of land-locked States" should be clearly defined, as had been done in the case of the other concepts. The basic divergence of opinion concerning this concept of "right" made it impossible to adopt provision 179, even in an amended form, despite the agreement in principle mentioned above.

4/ The group subsequently held one more meeting.

3?

Owing to lack of time, it was not possible to give adequate consideration to provision 161. Nevertheless, the few statements that were made on the subject revealed that the concept of "reciprocity" will, in all likelihood, constitute another stumbling-block in connexion with the question of transit.

It will be apparent that the work of the group has not produced adequate practical results. I am convinced, however, that the time devoted to considering the question of transit has not been wasted. Since the delegations of both transit States and land-locked States took a very active part in the discussions, the group was able to consider their opposing points of view in greater detail than in the past. To say the least, this result may be useful for the Conference's further work.

Mr. PISK

Mr. Chairman, if I may I shall report to the Committee on the work of four informal consultative groups, those on baselines, the contiguous zone, islands and enclosed and semi-enclosed seas.

The informal consultative group on islands held two meetings. It became clear that the question of the régime of islands was closely associated, in the discussion, with the question of delimitation. The views on the interrelationship between these issues divided the participants in the debate into generally two groups. While it did not prove possible to unite these groups, it was possible to reduce the number of alternatives in the main texts [illegible] of similar proposals met together to draft a common position. In addition, I was asked to convene a small group of co-sponsors of proposals relating to territories under colonial or foreign domination. On the basis of this meeting, I presented to the group a proposal combining some of the common elements.

The informal consultative group on baselines held three meetings, under the chairmanship of you, Mr. Chairman, and myself. The group discussed provisions 4 to 20 of document A/CONF.62/C.2/WP.1.

On the basis of the discussion in the group and the work of a small drafting group, the Bureau presented a consolidated text on the provisions studied. On the basis of comments made, the Bureau prepared a revised consolidated text which received a complete reading by the group. Although the text was not acceptable to all delegations, it should provide a good basis for the section on baselines in any single negotiating text.

The informal consultative group on the contiguous zone held one meeting. While it proved impossible to arrive at a consensus text, there appeared to be agreement on the context of contiguous zone jurisdiction and that such a zone should apply at least for those States not wishing to claim the maximum breadth of the territorial sea.

The group on enclosed and semi-enclosed seas held two meetings. Discussion centred on the definition of enclosed and semi-enclosed seas. There was agreement that the existing definition was too vague to form a basis for further discussion. Participants in the discussion were divided generally into two groups: those favouring a special regime for such seas and those favouring a global approach.

4-D

At the second meeting interested delegations presented a new definition which reflected the positions of those holding similar views. The discussion showed that further improvement of the new draft definition is desirable.

MR. NJENGA

Mr. Chairman, I should like to report to you on the work of the informal consultative groups on innocent passage and on straits.

The informal consultative group on innocent passage held six meetings, dealing with provisions on innocent passage in the territorial sea in the Main Trends document. On many of the provisions, it was possible to reach consensus in the group. Issues on which agreement could be reached included the definition of passage, the nature of activities which could be characterized as non-innocent, the type of laws and regulations the coastal State could make, and the exercise of civil and criminal jurisdiction in the territorial sea. It was not felt necessary to discuss certain issues because of their non-controversial nature. On these and other issues, the Bureau was assigned the task of producing a consolidated text based on the discussion in the group. The other issues include the question of passage of submarines, of warships, the question of ships with special characteristics and, generally, the organization of the provisions. This text is now being prepared and will soon be distributed.

The informal consultative group on straits held two meetings yesterday. As noted by many delegations, there was little movement towards a merging of the basic issues involved, that is (1) the definition of the straits involved and (2) the nature of the applicable regime.

In conclusion, I should like to thank delegations for their constructive contributions to the debate.

MR. NANDAN

Mr. Chairman, I should like to report to you on the work of the informal consultative groups on the high seas and on the exclusive economic zone.

The informal consultative group on the high seas held seven meetings. The group decided to defer until later the question of the definition of the high seas, the freedoms of the high seas and the living resources of the high seas. The discussion consequently was confined to the provisions on the rights and duties of States on the high seas, slavery, piracy, drugs, hot pursuit and transmission from the high seas.

On the basis of the discussion on these provisions, the Bureau prepared a consolidated text. The text was considered by the group provision by provision and many useful suggestions were made with a view to improvement. The Bureau is presently preparing for distribution a revised consolidated text on these provisions.

It would be fair to say that there was a large area of agreement on many of the provisions considered by the group. I would also like to add that the discussions were held in a useful and constructive manner.

5-8

The informal consultative group on the exclusive economic zone held four meetings.

In order to facilitate its work, the group started with the assumption that the coastal States' sovereign rights with respect to renewable and non-renewable resources in the exclusive economic zone was no longer a matter of controversy. Thus the group concentrated its attention on the other issues relating to the zone. These consisted of (1) the content and the extent of other interests to be accommodated in the zone, including the interests of land-locked and geographically disadvantaged States; (2) the content and nature of other rights or jurisdiction of coastal States with regard to other activities for the economic exploration and exploitation of the zone, such as the production of energy from water, wind and currents; (3) questions relating to coastal States' rights or jurisdiction with respect to scientific research and artificial islands, installations and similar structures; (4) questions relating to freedoms of navigation and overflight and of the laying of submarine cables and pipelines, as well as other uses of the sea connected with navigation and communication; and (5) any other issues which the group might wish to direct its attention to.

Although the group did not take any decisions on any of the issues, and the discussions were not necessarily systematic, I believe we had very useful exchanges of views and some interesting insights into the overall nature of the zone and the various specific issues.

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9 May 1975
A/CONF.62/WP.8 Part I

INTRODUCTION TO SINGLE TEXT RELATING
TO THE MANDATE OF THE FIRST COMMITTEE

by

PAUL BAMELA ENGO (United Republic of Cameroon)
Chairman of the First Committee

Mr. President,

You requested that I prepare a text on the totality of the mandate of the First Committee, bearing in mind that it should be a single, comprehensive document which should provide a basis for serious negotiation. The aim seemed to me to have been to provide a new opportunity for a fresh approach to the complex problems reflected in a multiplicity of draft proposals before the Committee. It was, you decreed, not to be a negotiated text and it would not bind anyone.

In addressing the Plenary on that same day, I exposed some inherent problems and proposed conditions which I felt had to be met if the document was to be useful. Notable among the latter was that the text should not be the subject-matter of a preliminary debate either on its balanced nature or on the extent to which it reflects the views of a particular delegation or group of delegations.

I now submit the single text requested and it is contained in document A/CONF.62/WP.8/Part I and its annex thereto.

In undertaking a task as delicate as this, my first preoccupation was to invite suggestions and frank opinions on the part of delegations. Thereafter I had to examine these and reach conclusions on the nature of the broad issues still outstanding. Finally, I had to seek the best system for approaching these, bearing in mind the need to draw attention to possible avenues of compromise in the negotiations ahead. A consensus is a most desirable element in the historic effort with which we are seized. If resort has to be made to a vote, it would appear to be best directed at questions over which there is agreement on the broad underlying issue involved, but where there is disagreement on either an approach to its statement or the extent of it. My quest was fundamentally for areas of overall general agreement, and then to work into particular areas, to see if more compromise or some new direction can be found for the future negotiating machinery.

Although these considerations were paramount in my mind, I had to take into consideration the overall principles expressed in the Declaration of Principles governing the sea-bed and ocean floor contained in General Assembly resolution 2749 (XXV) adopted on 17 December 1970.

It is important while in mind also the Declaration on the Establishment of a New International Economic Order" most recently adopted by the Sixth Special Session of the General Assembly.

The mandate of the First Committee involves a discussion on how to administer the declared "Common heritage of mankind" for the benefit of this and succeeding generations. It calls first for the establishment of an international régime for the sea-bed and ocean floor beyond the national jurisdiction of States, including provisions on its nature and characteristics. Secondly, it provides for the setting up of an international machinery to give effect to the régime, including its structure, functions and powers, in precise terms. Other matters of importance to be included include the nature of the activities of exploration and exploitation on the area, the equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or land-locked, the reservation and use of the area exclusively for peaceful purposes, and finally the use of the area exclusively for peaceful purposes.

I shall now try to discuss briefly some of the problems contained in this text :

1. I must say that the "international" throughout it is uncertain at this stage in our work what the final form of the new Caracas treaty will take. If it will be a collection of more than one Convention, then the only drafting changes will relate to the provisions that mention the Convention on the Sea-bed and the Ocean Floor and its Sub-soil Thereof beyond the Limits of National Jurisdiction. If, on the other hand, there is to be a single Convention covering the entire mandate of this Conference, then the drafting changes may involve the use of terms like "Part" or "Chapter" for the portion relating to the present mandate of the First Committee.

2. The text does not mention specific delimitation of the area because this would depend largely on the results of negotiations on the basis of the criteria of the latter. It also does not delimit the national jurisdiction of States.

This would be necessary in order to see a definition of the area in Part II under article 2. It calls on States Parties to notify the International Seabed Authority of the limits of their national jurisdiction, where it is by coordinates of latitude and longitude, and also indicating those on appropriate large scale charts officially recognized by that State.

2.3

3. There is an interpretative article 1 constituting Part 1 of the text. I wish to point out that it is not my intention to propose that the list is exhaustive. I have set out terminology with technical meaning either in juridical or in scientific terms. "States Parties" for instance means in the text "Contracting Parties". Where there is doubt as to what the latter means recourse must be had to the definition provided by the Vienna Convention on the Law of Treaties. That Convention applies the term to means who have signed and ratified a Treaty. It is legally desirable to maintain uniform terminology in treaties as much as possible. "Resources" in general and "mineral resources" are often used one in place of the other, which is to introduce confusion when dealing with a technical question. Both terms have accordingly been defined for the purposes of this Text.

4. Part II of the text contains eighteen articles devoted to the broad principles of the régime, which take breadth from the Declaration of Principles governing the seabed. The area and its resources are declared under article 2 to be the common heritage of mankind. The prevailing view at this Conference has been that it is difficult and in fact unnecessary to resolve the question of defining at new and so revolutionary a concept in precise terms. The better approach has been to elaborate certain norms and principles which may be taken to constitute it. Our present preoccupation is not with [illegible]

The provision for non-appropriation of the area and the prohibition of acquisition of rights except by and under the provisions of article 6 are significant. The old distinction between res nullius and res communis must await further development in this aspect of the Law. It is my view, that the totality of the principles the Common Heritage of Mankind cannot satisfactorily be subjected to either norm. This Convention must be read in its own context, not in accordance with juridical notions that may be irrelevant within the universe of discourse here.

The provisions for general uses and the non-discrimination clauses are taken care of in this Part. The text also emphasizes the provision that benefits shall accrue to mankind as a whole. This ensures that land-locked and other geographically disadvantaged States should enjoy the facilities of international life on equal terms as those of coastal States. There is a built in non-discrimination element in this, except for the developing countries whose interests and needs are of general global interest to a changing peace-seeking contemporary world.

3/5

5. The substantive terms of the items on Scientific Research and Transfer of Technology have been dealt with in very broad terms in articles 10 and 11. This part of the text will have to be examined and harmonized at some stage with work currently being done on them in the Third Committee. Insofar as it relates exclusively to the First Committee, article 10 provides that the Authority itself may conduct scientific research and has power to enter into agreements for that purpose. It also imposes a duty on States to promote international co-operation in the field. Details on how this should be done are also outlined.

With regard to the transfer of technology the Authority and through it States Parties shall take necessary measures for promoting it.

6. I should next like to draw attention to article 15 dealing with harmonization of measures in the area and in the marine environment which [illegible] other matters in paragraph 5 of the declaration [illegible] the conservation measures which have been or may be agreed upon in the context of international negotiations under the field of disarmament and which may be applicable to a broader area. It was hoped under that paragraph that one or more international agreements would or will be concluded at an early date in order to implement effectively the principle of excluding the area for peaceful purposes from the arms race. This article therefore avoids special reference to other installations because of that reservation. Instead, it [illegible] that [illegible] in the marine environment shall be conducted with reasonable regard for activities in the area. It is the hope that subparagraphs (iii) and (v) under paragraph 2 will, at an appropriate stage, be harmonized with ideas from the Second Committee dealing with safety zones in the proposed Economic Zone.

7. Article 17 deals with the juridical questions of responsibility or liability of States and international organizations in respect of activities which they undertake or authorize.

Article [illegible] to the desirability to promote participation by developing countries, especially the land-locked and disadvantaged ones, in the activities in the Area. This is a [illegible] which [illegible] to the benefits of science and technology notions.

4-B

9. Finally, article 19 deals with archaeological and historical objects on the lines proposed by interested delegations on the subject.

These eighteen articles are based on the Declaration of Principles and should present comparatively fewer difficulties, because the Declaration gives adequate guidance.

I shall [illegible] to part III of the text which deals with the International Seabed Authority. The creation of new institutions to effect broad ideas is not of easy one. When these involve revolutionary ideas forced on by [illegible] developments, complex and sometimes delicate problems present themselves to the legislator and the technician alike.

Listening to views expressed on this aspect of our work in open debate as well as in private consultations, one gathers the impression that two types of broad underlying considerations exist:

(a) genuine fears of the unknown

(b) the [illegible] interests of nations in economic as well as political terms

Out of these emerge conclusions that the type of international rights contemplated demands the creation of an international Authority with wide powers sufficient to perform complex functions. The trend of thought in the Committee has pointed irresistibly in that direction. My consultations reinforced my impression that majority of both developing and developed countries now accept it. There are various reasons for this. International co-operation for development a principle recognised by international law, has been declared the shared goal and common duty of all countries. A strong machinery would provide reassurances for about 70 % of the world's population in the developing world, who trouble at the crossroads of history with fragile economies and have little faith left in the benevolence of the [illegible] nations. It is also of interest to small and land-locked developed nations who are still to enter the age of marine technology as equal partners with other developed nations. It would provide an effective means of transfer of the knowledge of science and technology for them as for developing countries.

5 B

Besides these factors the Declaration on the Establishment of a New International Economic Order [illegible] that the interests of the developed [illegible] and those of the developing [illegible] can no longer be isolated from each other, and that there is a close interrelationship [illegible] the prosperity of the developed countries and the development of the developing countries. It goes on to state that "the prosperity of the international [illegible] as a whole depends upon the prosperity of its component parts".

[illegible] of contemporary international life, viewed [illegible] make these perspectives [illegible] inevitable [illegible] an unpardonable folly [illegible] the eyes [illegible] to a clear [illegible] which [illegible] to [illegible] effect [illegible].

[illegible] to concentrate on the organs of [illegible] most [illegible].

[illegible] that the Assembly should consist of all States Parties as Members. [illegible] the full membership [illegible] by a two-thirds majority [illegible] opinion that it should be the supreme policy-making organ of the Authority. [illegible] of a general character [illegible] the Council and other organs.

[illegible] or concurrent. In the case of [illegible] in my view that [illegible] a superior organ can [illegible] than ordinary [illegible]. Where [illegible] is [illegible] with the [illegible].

[illegible] the Council [illegible] I have [illegible]

[illegible] the Council. The composition [illegible]

[illegible]

International politics and future changes in global balance of power will tend to respect the existence of peoples and continents and the resources within them.

2. Equity is also applied by some to representation on the basis of different social and economic systems especially in the developed world. This is more difficult to define.

(a) because it refers to hardly identifiable criteria in the general European area. A basis for classifying modern policies and practices in the systems adopted by European States, into purely socialist and purely capitalist ideology no longer has valid credentials in strict terms.

(b) Economic systems are not static. I do not think it easy to defend any thesis on the extent of change that may be expected in 15 to 25 years, giving the pressures of global economic trends and the staggering advancements in science and technology. The truth of significance seems to be that peoples remain while systems change.

I have had to contend with the second question on the basis that peoples exist in defined geographical area who have special interests within it. The equity applicable to them is on the basis of special interests, rather than of the comparatively unsatisfactory ideological interest.

The text has had to create a balance among the major interest groups in the Council by setting up two categories of interests, equally represented. Thus six members will be from the developed nations on the criteria only they can meet, and six from the developing countries area on a variety of interest criteria elaborated under article 27. To deal with the reality of the apprehensions of the Socialist nations, the text provides under paragraph 1 (a) that one of the six developed nations at the first elections to the Council must come from Eastern (Socialist) Europe.

In this way the text responds on the one hand to the Developed versus the Developing country disparity. It also includes the producer versus importer interest relationship. On the other hand it induces the developed nations to apply their pecuniary and technological resources to activities in the area.

The definition of geographical groups for the purpose of this Convention appears under article 27 (c). The ratio considered equitable

I do not share these apprehensions. Neither the actions of these nations so far at this Conference, where they already command a two-thirds majority necessary for adopting a Convention, nor the prospects for economic interest in a joint endeavour lend weight to it. However, those who hold these fears appear to regard it as an important factor. Accordingly, the text provides [illegible] plus one majority for decisions at the level of the Council and the Organ.

The regime of [illegible] co-operation and of ensuring confidence, the text provides equal participation in the Enterprise for all geographical groups.

I shall now turn to another important question: the commencement of [illegible] and development may overtake our efforts [illegible] In responding to this challenge, the text proposes that a mine site should be available as early as practicable after entry into force of this Convention for pre-investment exploration and exploitation between the Authority, State enterprises etc. It provides, however, that the [illegible] of the site for its own pre-investment exploration.

[illegible] remained on the question of the criteria for determining what constitutes a viable mining site and what factors [illegible]

[illegible] on the information received that the term "mine site" is now in [illegible] misapplied use in the technical literature to describe the area that will be needed to sustain a commercial mining operation. The size of this area will be determined by the following factors:

(a) the [illegible] (that is, the number tons [illegible] per unit of square foot or square meter);

(b) the proportion of the area that can be mined, that is to say, [illegible] which the [illegible] of the nodules [illegible];

(c) the [illegible] with which the area can be swept with the [illegible];

(d) the proportion of the nodules in the area that is swept that will be recovered;

(e) the [illegible] capacity of the mining operation as a whole, [illegible] the annual throughput of [illegible] for example [illegible] million dry tonnes a year;

(f) the duration of the operation.

7.2

Although an increasing amount of information is now being published, it would appear to be impossible at this stage to ascertain what figures should be attached to these factors. However, it is possible to be reasonably confident about the range within which the figures are likely to lie as follows:

(a) 3-15 dry (mined) metre
(b) 80-90 %
(c) 40-70 %
(d) 40-80 %
(e) 1 million to 3 million dry tonnes a year
(f) 20-40 years.

The most uncertain of these figures relate to (b), (c) and (d), but present estimates suggest that the combination of these factors, that is the overall efficiency, is likely to lie somewhere between 10 and 30 %, but is much more likely to be between 20 and 30 %.

Considering all the factors together it emerges that the area needed for a 3 million tonnes a year operation for 30 years is likely to be about 40 - 100 sq kms.

The first generation of mines will exploit nodule deposits containing at least 1 % of both copper and nickel: it seems reasonable to assume average assays of about 1.3 % nickel and 1.1 % copper. These areas are therefore sometimes described as "first generation mine sites".

At this stage of our scientific and technological knowledge it is impossible even to make a very broad estimate of the total area of these so-called "first generation mine sites".

The experts consider that the number of such mine sites will not be less than 100.

As with any other mineral deposit, the grade of ore that is economically workable is likely to fall with time reflecting either lower mining costs (commonly economies of scale) or higher prices. Thus nodules containing, say, 0.9 or 1.0 % nickel and, say 0.7 to 0.8 % copper are likely to become workable at some time in the future, and progressively lower grade deposits may become available in the longer term.

Technical progress elsewhere in the mining industry, and development of technology will lead to second generation mining equipment. It is likely that deep-water deposits will be worked economically only with more advanced techniques so that they have been described as "second generation mine sites" (although these improved techniques could also be used to mine the first generation mine sites more profitably).

There will be no clear distinction between first and second generation mining equipment, but in general terms it is likely that second generation mine sites will be more [illegible]

9-2

pioneering both the technology of nodule recovery and treatment. Provided that there is an adequate incentive, development of deepsea mining technology is likely to be rapid.

The area needed for second generation mines may well be larger than for first generation as the throughput may well be larger (for example, 5 or 10 million tonnes a year).

It is more difficult to estimate the likely area of the seabed that is covered with nodules that can be regarded as "workable". There is some reason to believe that what is known as a Lasky distribution may apply, that is to say, that the size of the "ore body" will increase rapidly as lower and lower grades become acceptable. A conservative estimate is that at least 300 "mine sites" will be discovered.

It must be added here that these are estimates. The UN Secretariat has been requested by the First Committee to produce a more detailed comment on this subject.

Finally, now to perhaps the crucial question of who will exploit the area. The famous "article 9" of the sea-bed days has found its place in article 22 of this text. The consultations held this spring in Geneva and with delegations with a view to preparing this text leaves me in no doubt that a vast majority now accepts that the Authority must be given power to exploit directly.

Forms of this direct exploitation have been proposed to modify the provisions that it exploits on its own, this fundamental aspect seems to me resolved. In actual practice, I do not believe that the Authority will find it expedient in the near future to use this power.

As long as it maintains direct, full and effective control, it will be happy to promote joint-ventures with States, State enterprises, etc. With time the population of mining adventurers is bound to increase as technology gets effectively transferred to the developing countries. It would appear to me that these portions which the Authority will reserve for further exploitation may become the object of demand by those to whom technology is denied today. The training schemes and participation on the side of the Authority will increase their capacities and capabilities with the passage of time.

In any case, it is hard to justify the rejection of this right in [illegible] terms having regard to the concept of the common heritage and the Authority being the sole representative of mankind.

The non-discrimination clause appears again to ensure effective sharing of opportunities to participate in the activities in the Area.

It is necessary to read this central Article 22, in the light of the first Annex to this document, Annex I, which is entitled "Basic Conditions of General Survey, Exploration and Exploitation" contains what is in my view a system of exploration and exploitation based on the rather concise wording of article 22. It offers in a single text the elements necessary to enable our current negotiations in this important area to be brought to a successful conclusion.

The Annex is divided into three parts. Part A sets out certain basic principles derived from articles .... of the Treaty, viz: the rights of the Authority as manager of the resources of the common heritage in situ, its title to the minerals won from these resources, and provisions on the opening of areas for general survey, exploration and exploitation. Part B gives expression to the view that the Authority itself should conduct activities in the Area, through an operational arm called the Enterprise , and sets out the conditions under which such activities are to be conducted. It is contemplated that the Enterprise will not, at least in the earlier stages of its existence, possess the full complement of personnel, equipment, funds and other resources necessary for the conduct of such activities, and that it will need to employ outside assistance for this purpose. With a view to ensuring fairness in the recruting such assistance, the text provides for employment on a non-discriminatory basis, provided the necessary qualifications are present. Sub-paragraph (c) of paragraph 4 deals with marketing of minerals and processed substances produced by the Enterprise , and seeks to provide the necessary assurance of availability of products on fair terms, while ensuring preferential treatment for the developing countries.

While as specified in sub-paragraph (d) of paragraph 4, exploitation by the Enterprise represents direct exploration and exploitation by the Authority , i.e. exploration and exploitation "under its direction and management", Part C covers indirect exploitation by the Authority through contracts, joint ventures, or other such forms of association. You may recall that the Authority may within the limits it may determine, enter into such associations for the conduct of activities in the Area, provided of course that it retains in all cases, direct and effective control. Part C deals with the nature of the contractual arrangements that might be necessary to give effect to this idea. It specifies the range of entities that might apply to enter into such

contractor; the qualifications of applicants, methods for the fair selection of applicants, including [illegible] of priority for a previous contractor that has performed satisfactorily to receive a contract for one or more further stages of operations in cases where an integrated series of stages is not contemplated. It may be noted that subparagraph (f) of paragraph 8 contemplates a limitation on the area covered by contracts for exploration and exploitation that may be entered into by the Authority with a single State Party or with persons from a single State Party, while subparagraph (g) contemplates that the Authority may decide annually how many contracts may be permitted in respect of each State, in order to give effect to subparagraph (f).

Paragraphs 9-11 set out the basic rights and obligations of the parties to the contract, including the contributions of the parties, the division of the proceeds of operations and security of tenure for the contractor. Subparagraph (d) of article 9 contemplates that there may be provisions concerning a fair rate of return [illegible] to be ruled upon to take

[illegible] of considerable importance to many countries which currently possess the technology and resources and are thus able to offer themselves as contractors immediately. [illegible] containing a list of matters on which the Authority must adopt rules, regulations and procedures, and, as to some of them, objective criteria on the basis of which such rules, regulations and procedures are to be

Paragraphs 14-15 deal with other essentials of the contractual relationship.

[illegible] as contemplates the commencement of the operation of the treaty. It contemplates the possibility, assuming the idea finds general acceptance, that in the period immediately following provisional application of the treaty the Authority shall give priority to integrated operations in a specified number of cases. This would, in my view, contribute toward establishing the necessary climate for early commencement of mining operations and the realization of the dream that all of us share, while at the same time maintaining the [illegible] of the basic philosophy underlying the treaty.

[illegible] settlement are included and a Tribunal is prescribed by the text. It is my intention to complete this text by presenting a further [illegible] on the Statute of the Tribunal.

It is also proposed to complete the annex by submitting the Statute of the Enterprise.

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General points of note

1. Questions of economy :

(a) The Operations Commission idea has been omitted for reasons of economy. The functions proposed for it can more economically be taken care of by other organs, and the Text has done this.

(b) I am of opinion that further economy may be saved by (a) making all employees of the Authority payable by the Secretary-General of the Authority. It would be too expensive for each organ to have a machinery for payment of wages, etc.. (b) Inspectors may also be part of the Secretariat so that there is central control. (c) All organs need not be established at once. They could be set up and made to function when they are necessary. In any case a huge bureaucracy must be avoided. (d) Consideration should also be given to the possibility of using existing international organizations and specialised agencies to avoid duplication and unnecessary expense. Co-ordination of effort in the international sphere is desirable if we are to strengthen the international community.

2. The proposal for the Conference on the Law of the Sea electing the first council has been rejected in this Text for various reasons. Among them is the practical difficulty of doing this while it is still difficult to identify who the "States Parties" to this Convention will be. A Council may well be elected and some of its members refuse eventually to sign or ratify. The first contemplates the earliest possible meeting of the Assembly or, as prescribed in article 73 (b), an Interim Commission may come into existence. This aspect will need further discussion and elaboration if necessary.

Finally, I wish to state that I have no illusions about the difficulties that the package of ideas posed by this Text will provoke. Its main function was designed to be the production of a solid basis for fruitful and expeditious negotiations. If it succeeds in providing this , even if all articles therein are amended or replaced, there would be full gratification.

The overall aim appears to be the encouragement of the exploitation of the sea-bed resources, especially mineral mining; this for the purposes of making benefits available for mankind as a whole on the basis of equity and not only or substantially a section of it. There is also the broader ideal of embarking on the positive construction of the conditions of international peace. Man now looks to the ocean as a new and perhaps the last available source of attaining this ideal.

13-B

My task has been similar to that of a Special Rapporteur in the International Law Commission, although the problem involved is more complex. Yet I feel I have had the greater privilege of knowing at first hand these past years, the views of Governments through their accredited representatives. I sincerely hope that my duty has in some modest measure been discharged in a manner productive of success for this, the most important and most crucial conference in the economic history of the world.

Thank you.